

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Third Party Communication: None  
Date of Communication: Not Applicable  
Person To Contact:

, ID No.  
Telephone Number:

Refer Reply To:  
CC:PSI:B04  
PLR-126831-09  
Date:  
November 16, 2009

Year 1 =  
Grantor =

Spouse =

CLAT =

X =  
Charitable =  
Organization

Y =  
CPA =

Year 2 =  
Accounting Firm =

Year 3 =  
Year 4 =

Dear :

This responds to the letter dated May 20, 2009, submitted on your behalf, requesting an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make allocations of generation-skipping transfer (GST) exemption to a trust.

### FACTS

The facts submitted and the representations made are as follows.

In Year 1, Grantor and Spouse established the Year 1 Charitable Lead Annuity Trust ("CLAT") and Grantor transferred \$X of publicly-traded stock to the trust. The terms of CLAT provide for an annuity interest to be paid to Charitable Organization, an

organization described in each of §§ 170(c), 170(b)(1)(A), 2055(a), and 2522(a), for a period of Y years. On the expiration of the Y-year period, the remainder is to be paid outright to skip persons.

Grantor and Spouse notified CPA of the transfer to CLAT in Year 1. Although CPA indicated he would prepare any necessary Forms 709 (United States Gift (and Generation-Skipping Transfer) Tax Form) on behalf of Grantor and Spouse, CPA failed to do so.

In Year 2, after consultation with an estate planning attorney, Grantor and Spouse contacted CPA and discovered no Forms 709 had been prepared to report the Year 1 transfer and to make any appropriate allocations. Thereafter, Grantor and Spouse hired Accounting Firm to prepare the necessary Forms 709 for Year 1. In Year 3, Grantor and Spouse filed the Forms 709 prepared by Accounting Firm, in which they elected to treat the transfer to CLAT as made one-half by Grantor and one-half by Spouse pursuant to § 2513. In preparing the Forms 709 for Grantor and Spouse, Accounting Firm failed to properly allocate the GST exemptions of Grantor and Spouse to the transfer treated as made one-half by each of them.

After the term of CLAT expired in Year 4, Accounting Firm advised Grantor and Spouse of the improper allocation of GST exemptions to the transfer.

Grantor and Spouse request an extension of time under § 2642(g)(1) and § 301.9100-3 to allocate GST exemption to the respective one-half of the value of the transfer that Grantor and Spouse are treated as making pursuant to their election under § 2513. Further, Grantor and Spouse request a ruling that the amounts of GST exemption allocated by Grantor and Spouse will be effective as of the date of the transfer.

## LAW AND ANALYSIS

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines “applicable rate” as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2642(a) provides the method for determining the inclusion ratio. Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the “applicable fraction”. The applicable fraction, as defined in § 2642(a)(2) is a fraction, the numerator of which is the amount of GST exemption under § 2631 allocated to the trust (or to property

transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust or involved in the direct skip.

Under § 2631(a) (in effect at the time of the transfer), for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption (equal to \$1,000,000 for the year at issue) that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations (in effect at the time of the transfer) provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Under § 2642(b)(1) (in effect at the time of the transfer), if an allocation of GST exemption to any transfer of property is made on a timely-filed Form 709 reporting such transfer, the value of such property for purposes of determining the inclusion ratio shall be its value for purposes of chapter 12, and such allocation shall be effective on and after the date of such transfer.

Under § 2652(a)(1) and § 26.2652-1(a)(1), generally, the transferor for purposes of the GST tax is the individual with respect to whom the property was last subject to Federal estate or gift tax. Section 2652(a)(2) and § 26.2652-1(a)(4) provide that, if, under § 2513, one-half of a gift is treated as made by an individual and one-half is treated as made by the spouse of the individual, then for purposes of the GST tax, each spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor spouse, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such

other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3 of the Procedure and Administration Regulations.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except in subtitles E, G, H, and I.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an election described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or to advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, an extension of sixty (60) days from the date of this letter is granted to allocate Grantor's and Spouse's available GST exemption to the respective one-half of the value of the transfer that each spouse is treated as making pursuant to their election under § 2513. The allocations will be treated as being affirmatively made on the date of the transfer.

These allocations should be made on separate supplemental Forms 709 for the year in which the transfer was made and the Forms 709 should be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the returns.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The ruling contained in this letter is based upon information and representations submitted by Grantor and Spouse and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Curt G. Wilson  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosure:  
Copy for § 6110 purposes

cc: